IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on behalf of all similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. 07-CV-04946
APPLE COMPUTER, INC., a California corporation and AT&T MOBILITY LLC, a Georgia corporation,	)	Judge Kennelly Magistrate Judge Ashman
Defendants.	)	

DEFENDANT AT&T MOBILITY LLC'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Dated: January 9, 2009

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I. INTRODUCTION

Plaintiff Jose Trujillo's lawsuit centers on an iPhone that he purchased from a retail store owned and operated by Apple Computer, Inc. ("Apple"), the iPhone's designer and manufacturer. This Court already has granted summary judgment to Apple on all of Trujillo's claims because, among other reasons, Apple in fact fully disclosed the allegedly concealed facts that the battery in that iPhone eventually would need to be replaced. Trujillo's claims against defendant AT&T Mobility LLC ("ATTM") should be rejected on summary judgment for the same reasons. Indeed, Trujillo's claims against ATTM are even weaker than were his claims against Apple, because it is undisputed that ATTM was not a party to the transaction in question.

II. STATEMENT OF FACTS

A. Plaintiff Jose Trujillo Sues Apple and ATTM.

Trujillo purchased an iPhone from an Apple retail store on July 2, 2007.[1] Def. ATTM's Rule 56.1 Stmt. of Undisputed Material Facts in Supp. of Its Mtn. for Summ. J. ("ATTM Stmt.") ¶ 7. Later that month, he filed a putative class action that was subsequently removed to this Court. In his amended complaint, he alleges that the defendants Apple and ATTM misled him and other consumers by failing to disclose that users must send their iPhones to Apple for battery replacement after about 300 charge cycles, which clears data from the iPhone and costs $85.95 if Apple's warranty period has lapsed, and that the cost of a loaner iPhone is $29. First Am. Comp. ¶¶ 12–16 (Docket No. 6). Trujillo alleges that, in concealing these facts, Apple and ATTM have violated the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") and committed fraud, breach of contract, and breach of implied warranties. *Id.* pp. 7–17. Trujillo also asserts counts for unjust enrichment and accounting. *Id.* pp. 17–20. As of July 2, 2008,

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[1] Since the filing of this lawsuit, Apple has released a new kind of iPhone, called a "3G iPhone." All references to "iPhones" in this case are to 2G iPhones, such as the one that Trujillo purchased from an Apple store.

Trujillo has not alleged that he sustained any actual battery-related problem or cost. ATTM Stmt. ¶ 16.

B. **Apple Moves for Summary Judgment on All Claims Against It Because the Allegedly Concealed Information Regarding Its Battery-Replacement Program Had in Fact Been Fully Disclosed.**

On December 7, 2007, Apple moved for summary judgment on all claims, explaining that the key allegation of Trujillo's lawsuit—that Apple failed to disclose the details of its battery-replacement program—is "simply wrong." Def. Apple Inc.'s Mem. of Points and Authorities in Supp. of Its Mot. for Summ. J., at 1 (Docket No. 54). In support of its motion, Apple demonstrated that it notified iPhone purchasers of important information regarding the product, including the existence of Apple's battery-replacement program, in several ways.

First and foremost, the feature label affixed to the iPhone box states that a "Minimum new two-year wireless service plan with AT&T [is] required to activate all iPhone features, including iPod features." ATTM Stmt. ¶ 19. The label also provides: "Battery has limited recharge cycles and may eventually need to be replaced by Apple service provider. Battery life and charge cycles vary by use and settings. See www.apple.com/batteries." *Id.* ¶ 18; 9/23/08 Order, at 3 (Docket No. 133).

That referenced web page provides additional details about the charge cycles and limited lifespan of rechargeable lithium-ion batteries, such as the iPhone's battery, and provides links to web pages about maximizing the iPhone battery's life span and on the details of Apple's battery-replacement program. *See* ATTM Stmt. ¶¶ 31–55. The web page about Apple's battery-replacement program discloses the costs involved:

> **iPhone Owners.** Your one-year warranty includes replacement coverage for a defective battery. You can extend your coverage to two years from the date of your iPhone purchase with the AppleCare Protection Plan for iPhone. During the plan's coverage period, Apple will replace the battery if it drops below 50% of its

> original capacity. If it is out of warranty, Apple offers a battery replacement for $79, plus $6,95 shipping, subject to local tax.

ATTM Stmt. ¶ 41.

Apple's iPhone support pages also describe the battery-replacement program in a "Frequently Asked Questions" section:

> **What is the iPhone Battery Replacement Program?**
>
> If your iPhone requires service only because the battery's ability to hold an electrical charge has diminished, Apple will repair your iPhone for a service fee of $79, plus $6.95 shipping. * * *
>
> **How much does it cost to participate in the program?**
>
> The program costs $79, plus $6.95 shipping. The program cost is $85.95 per unit. * * *
>
> **Will the data on my iPhone be preserved?**
>
> No, the repair process will clear all data from your iPHone. It is important to sync your iPhone with iTunes to back up your contacts, photos, email account settings, text messages, and more. * * *
>
> **How long will service take?**
>
> The repair process normally takes three business days. See the iPhone Service FAQ for information about getting an AppleCare Service Phone for you to use with all of your data while your iPhone is being repaired.

Id. ¶ 51.

The iPhone Service FAQ on Apple's web site describes the availability and cost of a loaner iPhone while a customer's iPhone is being repaired:

> **If I need to have my iPhone repaired, will I be able to borrow an iPhone to use?**
>
> Apple can provide an AppleCare Service Phone for you to use with all of your data while your iPhone is being repaired. The service fee for the AppleCare Service Phone is $29. For more details, please review the iPhone Rental Terms and Conditions.

Id. ¶ 54.

All of these web pages were available to Trujillo and would have been available to any potential iPhone purchaser on Apple's web site from the date the iPhone went on sale through at least December 5, 2007 (the date of the earliest of the affidavits that Apple filed in support of its summary-judgment motion). *See id.* ¶¶ 26–55.

C. The District Court Grants Summary Judgment to Apple on All of Trujillo's Claims.

On September 23, 2008, this Court rejected Trujillo's claims in their entirety by granting summary judgment to Apple on all six counts. The Court first explained that Trujillo's fraud claims fail because the sticker on the iPhone box "discloses what Trujillo, up to now, alleged was hidden," and "there could be no serious contention that this information was hidden from buyers." 9/23/08 Order, at 3–4 (Docket No. 133). Accordingly, the Court found that "no reasonable jury could find that deception occurred." *Id.* at 5. The Court also held that any remaining omissions were immaterial: "In light of the information that Apple disclosed on the outside of the iPhone's package—the battery's limited life and the potential need to have it replaced by an outside vendor, as well as the term of the warranty—no reasonable jury could find" that the cost of the battery-replacement program would be "significant in making a decision whether to purchase the device." *Id.* at 7.

The Court then held that Trujillo's breach-of-implied-warranty-of-merchantability claim fails because "[t]he Court is unable to find any support * * * for the proposition that a seller's failure to disclose the costs of replacing a device's consumable parts somehow breaches the implied warranty of merchantability." *Id.* at 9. The Court also found that the claim fails because the "disclosed eventuality of the iPhone battery's depletion" neither "involve[s] the iPhone's condition at the time of sale" nor implicates a "defect or non-conforming condition," as are required to assert a merchantability claim. *Id.* at 10. The Court noted that Trujillo had forfeited any claim of a breach of the warranty of fitness for a particular purpose. *Id.*

The Court also rejected Trujillo's remaining claims. The Court disposed of Trujillo's breach-of-contract claim because he failed to establish that his contract with Apple contained a definite and certain contractual term obligating Apple "to replace any depleted or broken parts indefinitely at no cost beyond the initial purchase price." *Id.* at 11. The Court rejected Trujillo's unjust enrichment claim as derivative of his already rejected fraud claims. *See id.* at 12. And the Court held that Trujillo had abandoned his claim for an accounting by failing to defend it. *Id.* at 3.

D. Trujillo's Claims Against ATTM, Which Was Not a Party to the Transaction Underlying this Lawsuit, Remain.

The Court's order granting summary judgment to Apple did not also extinguish Trujillo's claims against ATTM. Those claims, however, rest upon the same allegations. *See* First Am. Compl. pp. 7–20 (Docket. No. 6). Moreover, ATTM was not a party to Trujillo's July 2, 2007 purchase of the iPhone at issue from the Apple retail store in Oak Brook, Illinois. ATTM Stmt. ¶ 7.

ATTM also does not have a contract with Trujillo for service on that iPhone. In order to activate an iPhone for use with ATTM's network, a customer must use the iTunes program on his or her computer to enter into a wireless service agreement with ATTM. *Id.* ¶ 12. ATTM's records reveal that Trujillo neither activated that iPhone nor entered into a service agreement for that iPhone. *Id.* ¶ 13. To the contrary, the iPhone with the serial number printed on Trujillo's receipt from the Apple store (*id.* ¶¶ 8–9) corresponds to an iPhone activated on July 3, 2007 by a preexisting ATTM customer named Dawn Marie Trujillo (*id.* ¶ 13). Plaintiff Jose Trujillo was not an authorized user on Dawn Marie Trujillo's account. *Id.* ¶ 13.

Plaintiff Jose Trujillo later activated a different iPhone that had been purchased by Dawn Marie Trujillo at an ATTM retail store on a new account in his own name. *Id.* ¶ 15. As the Court has found, however, this second iPhone "is *not* the phone upon which [Plaintiff] bases his claims in this case." 9/22/08 Order, at 10 (Docket No. 131) (emphasis in original).

III. ARGUMENT

Trujillo's claims against ATTM and Apple rest on the same allegations, evidence, and legal theories. Accordingly, his claims against ATTM should be rejected for the same reasons the Court set forth in its September 23, 2008 Order granting summary judgment to Apple. In addition, those claims fail because ATTM was not a party to the transaction giving rise to this action: Trujillo did not purchase the iPhone at issue from ATTM and never activated it for use with ATTM's network by entering into a service agreement.

A. The Summary Judgment Standard

Summary judgment is appropriate if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Although all reasonable factual inferences should be drawn in favor of the party opposing summary judgment, summary judgment should be granted on a claim if the nonmoving party cannot support any element of the claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* 9/23/08 Order, at 2 (Docket No. 133).

B. Trujillo Cannot Establish a Violation of the ICFA.

The ICFA declares unlawful the "concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact * * * in the conduct of any trade or commerce." 815 Ill. Comp. Stat. 505/2. For an alleged omission to be actionable, the plaintiff must establish, among other things, that the omission was deceptive (*Bober v. Glaxo Wellcome PLC*, 246 F.3d 934, 938 (7th Cir. 2001)), "concerned the type of information upon which a buyer would be expected to rely in making a decision whether to purchase" (*Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 505, 675 N.E.2d 584, 595 (1996)), was intended to induce reliance (*id.* at 503–04, 675 N.E.2d at 594–95), and proximately caused damages (*Mulligan v. QVC, Inc.*, 382 Ill. App. 3d 620, 625, 888 N.E.2d 1190, 1195 (2008)). In light of the Court's order granting summary judgment to Apple and the fact that Trujillo purchased the iPhone at issue from Apple, Trujillo cannot show a genuine issue of material fact as to any of these elements.

The Court's Order granting summary judgment to Apple makes clear that Trujillo cannot establish that the alleged omissions were deceptive or material. The Court held that, even discounting the disclosures on Apple's web site, the sticker on the iPhone box alone "discloses what Trujillo, up to now, alleged was hidden": that the device's battery has limited recharge cycles and may eventually need to be replaced by an Apple service provider. 9/23/08 Order, at 3 (Docket No. 133). Moreover, these disclosures are "sufficient to make it reasonably clear that some out of pocket expense to the iPhone owner might be involved," as "[n]o reasonable consumer * * * would think that the replacement would be forever free of charge." *Id.* at 6. Accordingly, "no reasonable jury could find that deception occurred." *Id.* at 5. Nor could a reasonable jury find that the omission is material: "In light of the information that Apple disclosed on the outside of the iPhone's package—the battery's limited life and the potential need to have it replaced by an outside vendor, as well as the term of the warranty—no reasonable jury could find" that the cost of the battery-replacement program would be "significant in making a decision whether to purchase the device." *Id.* at 7. In other words, as the Court explained, "there was no bait-and-switch." *Id.* It was no more deceptive to fail to include the exact cost of Apple's battery-replacement program on the iPhone's sticker than it would be for "a seller of a new car" to fail "to disclose to the buyer, up front, the likely cost of replacing the car's tires, brakes, or even its transmission." *Id.* at 8.

These findings also doom Trujillo's ICFA claim against ATTM. It is true that the Court noted in granting summary judgment to Apple that Trujillo's claims against ATTM appear to "differ[] somewhat" from his claims against Apple because the former are "premised upon the interaction between the need to replace the iPhone battery within less than two years after purchase of the device and ATTM's requirement of a two-year minimum service contract." *Id.* at 4. But Trujillo's claims against ATTM depend ***entirely*** on the very allegations that this Court already has rejected—that the pertinent details of the battery-replacement program were not disclosed. His claims against ATTM therefore fall with his claims against Apple. In any event, Trujillo never alleged that the requirement of a two-year service contract was not disclosed, and with good reason: That requirement appears on the same sticker that discloses the limited lifespan of the iPhone's battery. *See* page 2, *supra*.

Trujillo's ICFA claim also fails because he cannot establish any ATTM misrepresentation or actionable omission. There is no dispute that he purchased the iPhone at issue from Apple, not ATTM, and never activated that iPhone for use with ATTM's network by entering into an ATTM service agreement. *See* pages 5–6, *supra*. Trujillo also does not allege that ATTM manufactured the iPhone or played any role in Apple's battery-replacement program. Because ATTM neither was a party to the sales transaction nor participated in manufacturing the iPhone or its battery, ATTM did not have a duty to disclose anything to Trujillo. Courts have found that a manufacturer or a seller may be liable under the ICFA for a deceptive omission, even if it does not have the sort of special relationship with the purchaser that at common law would have created a duty of disclosure. *See, e.g.*, *Celex Group, Inc. v. Executive Gallery, Inc.*, 877 F. Supp. 1114, 1129 (N.D. Ill. 1995); *Connick*, 174 Ill. 2d at 504–05, 675 N.E.2d at 595 (citing *Celex*). But ATTM is aware of no authority suggesting that the ICFA imposes liability for "concealment" on a complete stranger to the transaction.

For the same reason, Trujillo cannot show that ATTM "intended that [Trujillo] rely on" its silence about the details of Apple's battery-replacement program "in making the[] choice to buy [the iPhone]" from an ***Apple*** store. *Jensen v. Bayer AG*, 371 Ill. App. 3d 682, 689, 862 N.E.2d 1091, 1098 (2007). Nor can Trujillo establish "[p]roximate causation," as he cannot show that "he was deceived by [ATTM's] representations or omissions"—rather than by Apple—into purchasing the iPhone at issue. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 200, 835 N.E.2d 801, 861 (Ill. 2005).

C. Trujillo Cannot Establish the Elements of His Claim for Fraudulent Concealment.

Trujillo's common-law claim for fraudulent concealment fails for the same reason that his ICFA claim fails. To prove a claim for fraudulent concealment, the plaintiff must show that the defendant had a duty to disclose but nevertheless intentionally concealed a material fact on which the plaintiff relied, causing damages. *Kelly v. Sears Roebuck & Co.*, 308 Ill. App. 3d 633, 644–45, 720 N.E.2d 683, 692 (1999) (citing *Connick*, 174 Ill. 2d at 496, 500, 675 N.E.2d at 591, 593). As noted above, Trujillo cannot establish that ATTM's alleged omissions were deceptive or material.

Trujillo also cannot show that ATTM had a common-law duty to disclose the allegedly concealed facts about Apple's battery-replacement program to him. As the Illinois Supreme Court has explained, unless the plaintiff was "in a confidential or fiduciary relationship with" the defendant or the defendant "was in a position of superiority over" the plaintiff, there is no "duty to disclose material facts which could give rise to a claim for common law fraudulent concealment." *Connick*, 174 Ill. 2d at 500–01, 675 N.E.2d at 593. This burden of establishing the existence of such a relationship is a heavy one. For example, an arms-length transaction between a customer and a car dealer (*Miller v. William Chevrolet/GEO, Inc.*, 326 Ill. App. 3d 642, 657, 762 N.E.2d 1, 13–14 (2001)) or a "conventional mortgagor-mortgagee relationship" between a homeowner and a bank (*Mitchell v. Norman James Constr. Co.*, 291 Ill. App. 3d 927, 934, 684 N.E.2d 872, 879 (1997)) do not suffice. Trujillo's relationship with ATTM with respect to the iPhone at issue—which is nonexistent—therefore falls far short of the mark.

ATTM's complete absence from the transaction in which Trujillo purchased the iPhone at issue from the Apple retail store also precludes him from establishing that ATTM had the requisite intent to deceive him or that its silence proximately caused him to buy the iPhone. *See* pages 8–9, *supra*. For the same reason, no reasonable jury could find that Trujillo justifiably relied upon ***ATTM's*** silence.

Trujillo also cannot establish reliance for an additional reason: Apple disclosed the allegedly concealed details of Apple's battery-replacement program on the iPhone box and in the materials either packaged with the iPhone or on Apple's web site. *See* pages 2–4, *supra*. As the Seventh Circuit has explained, in order to demonstrate that one's reliance is "justified" under Illinois law (*Davis v. G.N. Mortgage Corp.*, 396 F.3d 869, 882 (7th Cir. 2005)), the plaintiff must show either that he or she "could not have discovered the truth through a reasonable inquiry or inspection, or was prevented from" doing so. *Trustees of AFTRA Health Fund v. Biondi*, 303 F.3d 765, 777 (7th Cir. 2002); *see also Davis*, 396 F.3d at 882 (citing cases). Trujillo cannot possibly hope to meet that burden.

D. Trujillo's Claims for Breach of Warranty and Breach of Contract Fail Because ATTM Did Not Sell Him the iPhone at Issue.

Invoking the same alleged omissions that underlie his fraud claims (First Am. Compl. pp. 7–12 (Docket No. 6)), Trujillo asserts that ATTM breached the implied warranty of merchantability under 810 Ill. Comp. Stat. 5/2-314, the implied warranty of fitness for a particular purpose under 810 Ill. Comp. Stat. 5/2-315, and an alleged contract. First Am. Compl. pp. 12–17. The breach-of-implied-warranty-of-merchantability claim fails, however, for the same reasons that led the Court to reject the same claim against Apple. Moreover, all of the breach-of-warranty and breach-of-contract claims fail because Trujillo did not purchase the iPhone at issue from ATTM.

In the order granting summary judgment to Apple, the Court rejected Trujillo's claim for breach of the implied warranty of merchantability for three reasons. First, "[t]he Court is unable to find any support * * * for the proposition that a seller's failure to disclose the costs of replacing a device's consumable parts somehow breaches the implied warranty of merchantability." 9/23/08 Order, at 9 (Docket No. 133). Second, the "disclosed eventuality of the iPhone battery's depletion does not involve the iPhone's condition at the time of sale," as is required to assert a merchantability claim. *Id.* at 10 (citing *Lipinski v. Martin J. Kelly Oldsmobile, Inc.*, 325 Ill. App. 3d 1139, 1150, 759 N.E.2d 66, 75 (2001)). Third, the fact that the iPhone's rechargeable battery may need to be replaced at some expense if the iPhone's warranty has lapsed does not constitute the requisite "defect or non-conforming condition." *Id.* (citing *Mullen v. Gen. Motors Corp.*, 32 Ill. App. 3d 122, 129-30, 336 N.E.2d 338, 344 (1975)). Trujillo's merchantability claim against ATTM should be rejected for the same reasons.

In addition, Trujillo's merchantability claim fails because, as explained above, the risk that the battery would need to be replaced at some expense was disclosed. *See Haddix v. Playtex*

Family Prods. Corp., 964 F. Supp. 1242, 1246-47 (C.D. Ill. 1997) ("When a product is sold with a warning as to a specific risk, the warranty of merchantability [under Illinois law] is not breached when a user of the product is harmed by that specific risk."), *aff'd*, 138 F.3d 681 (7th Cir. 1998).

More fundamentally, all of Trujillo's breach-of-warranty and breach-of-contract claims suffer from the same fatal flaw: With respect to the iPhone at issue, which Trujillo purchased from an Apple retail store, it is undisputed that Trujillo and ATTM have no contractual relationship. Accordingly, ATTM undertook no contractual obligations regarding that iPhone to Trujillo and is not a warrantor.

Under Illinois law, the implied warranties that Trujillo invokes are made by the "seller" of the goods in question. Section 2-314(1) of Illinois's Uniform Commercial Code provides that the "warranty that the goods shall be merchantable is implied in a contract for their sale if the ***seller*** is a merchant with respect to goods of that kind." 810 Ill. Comp. Stat. 5/2-314(1) (emphasis added). Similarly, Section 2-315(1) provides that the "implied warranty that the goods shall be fit for [a particular] purpose" arises "[w]here the ***seller*** at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the ***seller's*** skill or judgment to select or furnish suitable goods * * *." 810 Ill. Comp. Stat. 5/2-315(1) (emphasis added). Trujillo's warranty claims therefore fail because Apple—not ATTM—is the "seller" of the iPhone in question. *See Voelker v. Porsche Cars N. Am., Inc.*, 353 F.3d 516, 525 (7th Cir. 2003) ("Under the law of Illinois, privity of contract is a prerequisite to recover economic damages for breach of implied warranty.") (citing *Rothe v. Maloney Cadillac, Inc.*, 119 Ill. 2d 288, 292, 518 N.E.2d 1028, 1029–30 (1988)); *Lindsey v. Ed Johnson Oldsmobile, Inc.*, 1996 WL 411336, at *9 (N.D. Ill. July 19, 1996) ("The plaintiff likewise has no claim against CAC for breach of implied warranty under section 2-314 of the Uniform Commercial Code since CAC was not the seller of the vehicle purchased by plaintiff.") (citing *Rothe*).

E. Trujillo Has No Claim for Unjust Enrichment.

Trujillo's claim for unjust enrichment is an alternative to his breach-of-contract claim. To prevail, he must establish that he "has no adequate remedy at law," that ATTM "has unjustly retained a benefit to [his] detriment, and that retention violates fundamental principles of justice, equity, and good conscience." 9/23/08 Order, at 12 (Docket No. 133) (citing *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill. 2d 145, 160, 545 N.E.2d 672, 679 (1989)). As the Court noted in granting summary judgment to Apple on Trujillo's unjust-enrichment claim, "the only form of wrongful conduct Trujillo identifies in connection with his unjust enrichment theory is 'fraud, consumer fraud, etc.'"—which are precisely the claims that the Court rejected directly on their own merits. *Id.* Trujillo's unjust-enrichment claim against ATTM should be rejected for the same reason.

In addition, Trujillo's unjust-enrichment claim should be rejected for lack of proof that Trujillo "conferred a benefit" on ATTM. *Village of Oak Lawn v. Faber*, 378 Ill. App. 3d 458, 469, 880 N.E.2d 659, 669 (2007). It is undisputed that Trujillo purchased the iPhone at issue at an Apple retail store and never entered into a service contract with ATTM for that iPhone. *See* pages 5–6, *supra*. Trujillo therefore has not benefited ATTM, unjustly or otherwise.

F. Trujillo Has No Basis for an Accounting.

Trujillo's claim for an accounting of the "income, revenue, and interest generated" from iPhone sales and Apple's battery-replacement program (First Am. Compl. p. 19, ¶ 32 (Docket No. 6)) is derivative of his other claims and therefore falls with them. Indeed, Trujillo did not even attempt to defend his claim for an accounting against Apple. 9/23/08 Order, at 3 (Docket

No. 133). To be entitled to an accounting, Trujillo must show that he lacks an adequate remedy at law and either fraud, a breach of a fiduciary duty, the need for discovery, or the existence of complex mutual accounts. *Cole-Haddon, Ltd. v. Drew Philips Corp.*, 454 F. Supp. 2d 772, 778 (N.D. Ill. 2006) (citing *Mann v. Kemper Fin. Cos.*, 247 Ill. App. 3d 966, 980, 618 N.E.2d 317, 327 (1992)). Not only would Trujillo's claims under the ICFA, UCC, and common law constitute adequate legal remedies, the failure of his ICFA and fraudulent-concealment claims—his only possible avenue to being entitled to an accounting—doom his claim for an accounting.

IV. CONCLUSION

For all of the foregoing reasons, ATTM respectfully requests that the Court grant its motion for summary judgment as to each of Trujillo's causes of action.

Dated: January 9, 2009

Respectfully submitted,

AT&T MOBILITY LLC

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CERTIFICATE OF SERVICE

I, Emily M. Emerson, an attorney, hereby certify that on January 9, 2009, I electronically filed the foregoing **DEFENDANT AT&T MOBILITY LLC'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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Respectfully submitted,

/s/ Emily M. Emerson

Dated: January 9, 2009

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